

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No.1816 of 2004
Decided on: 07.02.2018

Gurjeet Kaur & others

....Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Sanjay Majithia, Sr.Advocate
with Mr.Inderjeet Singh, Advocate, for the appellant
in RFA-1816 & 2079-2004.

Mr.Sandeep Bansal, Advocate and
Mr.Arun Bansal, Advocate, for the appellants
in RFA-2035, 2036 & 2178-2014, 485, 503,
504, 505 & 507-2005.

Ms.Gurdeep Kaur, Advocate, for
Mr.S.K.Sharma, Advocate, for the appellants
in RFA-5564-2014.

Ms.Akshita Chauhan, AAG, Punjab.

Mr.Sanjeev Pandit, Advocate, for respondent No.3
& X-Objector in XOBJ-21-CI-2005 in RFA-2178-2004.

None for the private-respondents.

G.S. SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 11 appeals bearing RFA-1816, 2035, 2036, 2079 & 2178-2004, 485, 503, 504, 505 & 507-2005 and 5564-2014 and X-OBJ-21-CI-2005 in RFA-2178-2004, involving common questions of law and facts, filed against the awards dated 24.05.2004, 05.06.2004 and 31.07.2004, passed by the Reference Court at Hoshiarpur under Section 18 of the Land Acquisition Act, 1894 (for short, the 'Act'), whereby the Reference Court has assessed the market value at Rs.20,000/- per marla (Rs.32 lacs per acre).

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The land in question measuring 54 kanals 6 marlas (around 7 acres) was sought to be acquired for the purpose of setting up the Judicial Court Complex at Dasuya. The Section 4 notification was issued on 08.09.1994 and the Land Acquisition Collector, vide award dated 07.07.1997, assessed the market value at the following rates:

<u>Kind of land</u>	<u>Rate Per Acre</u>
Chahi	Rs.1,48,120/-
Barani	Rs.1,48,120/-
Gair Mumkin rasta, Dher, Bagicha and tubewell	Rs.1,48,000/-
Gair Mumkin abadi	Rs.4,30,000/-

The land-owners being dissatisfied, filed reference applications under Section 18 whereby they challenged the compensation awarded as being ridiculously low and inadequate and primarily relied on the market value on the basis of the 2 sale deeds dated 05.04.1991 (Ext.A-4) and 28.10.1992 (Ext. A-5), which were in favour of Surinder Singh of 1 marla each (25 Sq.yards). The vendor in the sale deed in question was Kuldeep Singh, who is appellant in RFA-2036-2004 and whose 1 kanal 2 marlas land has also been acquired in addition to the 2 marlas of land of Surinder Singh. The claim was between Rs.1,25,000/- to Rs.2 lacs, per marla by the land-owners (Rs.3,20,00,000/- per acre). It was their case that the land was situated within the Municipal Limits Dasuya and falling in Ward No.9, though it was falling in the revenue estate of Village Langarpur. It was, accordingly, contended that it had commercial value falling on GT road

leading from Jalandhar to Pathankot and therefore, the potentiality of the land in question had not been properly assessed.

The argument of the State Counsel was that the land was agricultural and it had no commercial potential. It was further contended that the exemplars (Exts. A-4 & A-5) were of very small portion of land and therefore, were not reliable and even if it had to be taken into consideration, necessary cut of 50% at least was to be applied, since they were abutting the main highway and would not be the correct market value of the land falling at the back of the larger chunk which was acquired.

Keeping in view the evidence which had come on record, the Reference Court noticed that the acquired land was part of Ward No.9 of Municipal Council, Dasuya, as per the notification dated 01.12.1975 (Ext. A-6), issued by the Punjab Government and was partially abutting the Jalandhar-Pathankot road. The factum of the commercial potentiality was noticed that there were many commercial buildings in the form of shops, Tehsil Complex, SDM office, office of the Punjab State Electricity Board and Railway Station and other commercial buildings adjoining, therefore, the value had to be fixed in marlas.

For the said principle, there can be no quarrel that if the land falls within the municipal limits, then its value has to be assessed on the basis of marlas. Reference can be made to **Gurvinder Singh & others Vs. Haryana State 2005 (1) PLR 804**, wherein reliance was placed upon the Division Bench judgment of **Shri Lakhmi Dass Vs. Punjab State 1977 PLJ 464**. Similarly, the judgment of the Apex Court in **Suresh Kumar Vs. Improvement Trust, Bhopal 1989 (2) SCC 329** also holds to the said

effect.

It was noticed that the sale deed dated 05.04.1991 (Ext. A-4) which was in favour of Surinder Singh, was for Rs.20,000/- and was sold for the purpose of construction of a shop by carving out a plot and on that basis, the market value had been fixed at Rs.20,000/- per marla. The second sale deed dated 28.10.1992 (Ext. A-5) was not taken into consideration on the ground that it was executed by Kuldip Singh whose land was also acquired and on account of getting the news of the proposed acquisition, the amount of sale consideration would have been enhanced.

Apart from that, in view of the additional evidence received (Ext.RX) of the Chandra Committee whereby the market value of the acquired land had been determined wherein Rs.20,000/- per marla was the market value of the abadi area, the compensation/market value was assessed at the said rate. The sale deed (Ext. A-5), which was of 1 marla, was also discounted on the ground that by applying a cut in the sale deed, the market value could not been less than Rs.20,000/- per marla. The issue regarding the construction was also decided against the land-owners on account of the fact that there was no construction raised in the case of Surinder Singh.

It is, thus, pertinent to notice that the second sale deed dated 28.10.1992 (Ext.A-5) is for Rs.30,500/-, executed after a period of 1 ½ years from the first sale deed. The sale deeds of the State were ignored on the ground that neither the vendee had been examined nor the location of the land where it had been located was indicated.

Mr.Arun Bansal, Advocate has argued that in the case of one Vidya Sagar, whose property was adjoining the acquired land, compensation

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has been given at Rs.64,800/- per marla (Rs.1,03,68,000/- per acre) vide award dated 11.05.2004 and therefore, other land-owners should also be given the same benefit. He has referred to the observations of the Reference Court in its judgment dated 05.06.2004 in RFA-507-2005, filed by Gurnam Singh, wherein this issue was discussed. The Reference Court had also noticed the fact that on an earlier occasion on 24.05.2004, qua the other land-owners, amount had been assessed at Rs.20,000/- per marla for fixation of the market value. As the land had been purchased by Vidya Sagar, which was for a small chunk of land, accordingly, he chose to follow the compensation awarded in the earlier award dated 24.05.2004 @ Rs.20,000/-. Mr. Bansal has, accordingly, argued that compensation should also be enhanced to Rs.64,800/- on account of the location of the land, being the same.

Counsel for the State, on the other hand, submits that the compensation has been assessed on the basis of the evidence on record and there is no case made out for enhancement.

A perusal of the record in the main case, namely, Surinder Singh, bearing land reference No.9 of 2000 would go on to show the site-plan was Ext. A-3, which showed the location of the land, as such. It is not disputed that the Tehsil Block was at a distance of 80/90 yards and the Civil Hospital was also at a distance of 1 km and the Railway Station was at a distance of 2 furlongs. However, the fact remains that Kuldip Singh had sold a miniscule area of 1 marla (25 sq.yds.) by way of initial sale deed dated 05.04.1991 and the second one was also on 19.10.1992. The land in question which was acquired is 54 kanals 6 marlas (around 7 acres) and

therefore, necessary cut would always have to be applied. The Apex Court in various judgments has noticed that the rate of cut can vary from 10% to 65%. Reliance can be placed upon the judgment of the Apex Court in **Trishala Jain and another Vs. State of Uttaranchal and another' 2011 (6) SCC 47** and **Chandrashekar (D) by LRs & others Vs. Land Acquisition Officer & another 2012 (1) SCC 390**, to this extent.

It is not disputed that the market value has to be assessed on the basis of the price which is to be paid by a willing vendor and the person who is willing to purchase at a market value. The price of 54 kanals of land, thus, cannot be assessed on the basis of a sale of 25 sq.yds. of a plot of land which is just abutting main road and it would not be a safe parameter, as such. The land-owners have been granted the amount of compensation at Rs.20,000/- per marla for which they had purchased the land. Another aspect which is to be kept in mind is that the second sale deed was executed for another small patch of 1 marla land again whereby the value had gone up to Rs.30,500/-, within 1 ½ years.

The son of the vendee namely, Rashpal Singh was examined as AW-4, who was resident of Village Sekhewal, District Ludhiana and in his cross-examination, it has been elicited that his father was residing there from the date of partition and he had been living with his father. It was denied that his father had ever lived in the Village Shangla, which was the village of the vendor-Kuldip Singh. He further has stated in the cross-examination that it never came to his notice that his father had purchased the land and only after the death of his father, when the land in dispute was shown to him by the relatives who were residing at the Village Shangla,

therefore, for the first time he had visited to find out where the plot in question was situated. He admitted that there was no pucca shop on the disputed land. He denied the suggestion that he knew Kuldip Singh or that he had met him earlier.

The said facts necessarily go on to show that the sale deed, as such, does not depict the correct market price and the Reference Court was well justified in coming to the conclusion that the second sale deed which was executed in favour of Surinder Singh was with the purpose to get the market value enhanced as the wind of acquisition had got to the land-owners. A perusal of the recitals of the sale deed dated 28.10.1992 (Ext. A-5) would also go on to show that a sum of Rs.35,000/- was never paid before the Registrar but was received at home. All these factors evidently point out a finger that the sale deeds of the small patches of land were only executed for the purpose of enhancement of the value, keeping in view the forthcoming acquisition and therefore, reliance cannot be placed upon them, in any manner, as contended by the counsel for the appellants.

Even otherwise, as argued by the Senior Counsel that even if cumulative increase is to be granted at the market value, for a period of 3 years, as such, of Rs.20,000/- @ 10%, which would come to Rs.27,740/- on a cumulative basis, does not also cut much ice with this Court. For the said patch of land, if a 1/3 cut is applied, which in the normal circumstances is the minimum, a sum of Rs.9246/- would have to be deducted from the said amount and therefore, the market price would again come to Rs.18,494, which is less than the amount the Reference Court had awarded at Rs.20,000/- per marla and therefore, the argument which has been built up

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also does not sustain. Merely because the State chose not to contest the award dated 11.05.2004 in case of one Vidya Sagar whose shop was adjoining, wherein an exorbitant price of Rs.64,800/- per marla has been awarded, would also not be of much help, as neither the sale deed was placed on record, which was also of 1 marla. It is pertinent to notice that the sale deed dated 25.01.1994 in favour of Vidya Sagar, as such, was never placed on record and only the award dated 11.05.2004, as such, has been relied upon. Neither the vendor, the vendee Vidya Sagar had also been examined. Therefore, the benefit was denied to the State, who could have elicited from the cross-examination of the vendor and the vendee as to in what terms and circumstances, the sale deed had been executed on 19.04.1989 at a rate which was well above the Collector rate. Merely because an award had been passed for that portion of the acquired land and due compensation, has such, had been given to the said vendee, namely, Vidya Sagar and the State has chosen not to challenge the said award, would not be a ground to enhance the compensation to the same level, to the land-owners whose land were situated well behind the plot situated on the highway.

It is settled principle that the onus of proving the market value is always on the land-owners and after sufficient evidence has been brought on record, the onus would shift to the State. The principle that has to be kept in mind is, on the basis of the price a willing purchaser is willing to buy and the price the land-owner is willing to receive and the burden is to be discharged by the claimants and only after that, the burden shifts to the State, to justify the award. Reference can be made to the judgment of the

Apex Court in **Gafar & others Vs. Moradabd Development Authority & another (2007) 7 SCC 614**. In the absence of any material evidence which is worth consideration and in an independent form, by some independent vendor, the claim for enhancement, thus, on the basis of these 2 sale deeds is not tenable, in view of the above circumstances. The Reference Court, in such circumstances, has taken a safer way by referring to the Collector rate, to come to the conclusion that the market value was only Rs.20,000/- per marla.

The additional argument raised by Mr.Pandit, appearing for the cross-objector in XOBJ-21-CI of 2005 in RFA-2178-2004, namely Inderjit Singh and who was the petitioner in the land reference titled as *Chint Kaur & others Vs. State of Punjab & others* decided on 31.07.2004, that adequate compensation was not given on account of tube-well, has also been duly addressed by the Reference Court under Issue No.3. The Reference Court noticed that AW-4-Anoop Singh Kalsi, who had been examined, neither determined the age of construction for assessing the evaluation of the tube-well and the same was to be removed by the petitioners. Resultantly, the amount already awarded by the Land Acquisition Collector on the said issue was also upheld as was the claim for severance for 4 kanals of land from Khasra No.25, on account of the fact that there was no evidence regarding this aspect which had been led and therefore, compensation could not be granted. Counsel for the cross-objector, as such, also could not refer to any statement of the witnesses for independent assessment on the issue of severance and how access had been denied to 4 kanals by referring to any site-plan of the relevant khasra number. In such circumstances, the cross-

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objections also are not liable to be allowed.

Counsel for the appellants has referred to the judgments in ***Special Land Acquisition Officer, Kheda & another Vs. Vasudev Chandrashankar & another 1997 (11) SCC 218*** and ***Ali Mohammad Beigh & others Vs. State of J&K 2017 (4) SCC 717***, to submit that on account of an earlier award they were entitled for the same benefits.

The evidence has been discussed in detail, as noticed, regarding in what circumstances the sale deeds have been executed and at what point of time and of which year. Once a doubt is cast upon the exemplars then the judgments, as cited above, as such, would not be applicable, in the facts and circumstances.

Accordingly, this Court is of the opinion that the appeals are without any merit and no case for enhancement is made out. Consequently, all the appeals as well as XOBJ-21-CI of 2005 in RFA-2178-2004 are hereby dismissed.

07.02.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes